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18
19 IN THE UNITED STATES DISTRICT COURT
20
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA
22
23 SAN FRANCISCO DIVISION

24
25 **LENNIS L. ROBERSON,**

26 Plaintiff,

27 v.

28 **JEANNE WOODFORD, et al.,**

29 Defendants.

30 CASE NO. C 07-3497 CRB (PR)

31 **DEFENDANTS' REPLY TO
32 PLAINTIFF'S OPPOSITION
33 TO DEFENDANTS' MOTION
34 FOR SUMMARY JUDGMENT**

35
36 **PRELIMINARY STATEMENT**

37 Plaintiff Lennis Roberson (Plaintiff) is an inmate at the Correctional Training Facility,
38 Soledad. Plaintiff received grooming standard violations in 1998, and was deemed a "program
39 failure." In 2006, the California Department of Corrections and Rehabilitation (CDCR) adopted
40 new grooming policies to comply with the Religious Land Use and Institutionalized Persons Act
41 (RLUIPA), and offered to restore lost behavioral credits to inmates who were found guilty of
42 grooming violations based on their religious beliefs if the inmates could verify the fact that their
43 nonconformance was based on religion. Plaintiff presented no evidence to CDCR officials that
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1 his non-conformance with grooming policies was based on religious beliefs, therefore he was
 2 ineligible for restoration of behavioral credits.

3 Plaintiff's Complaint alleges that Defendants Childers, Gibbs-Battenfeld, Guerra, and
 4 Woodford^{1/} (Defendants) violated Plaintiff's right to the free exercise of his religion under the
 5 First Amendment and RLUIPA, as well as Plaintiff's right to equal protection under the
 6 Fourteenth Amendment. Plaintiff is seeking time credit restoration for grooming standard
 7 violations he received in 1998, damages, and an injunction to rectify alleged constitutional
 8 violations. Plaintiff's claims against Defendants are based solely on Defendants' alleged acts and
 9 omissions for events occurring at the Correctional Training Facility in Soledad.

10 Plaintiff did not inform prison officials that his grooming violations were connected to his
 11 religious faith. At the disciplinary hearings in 1998, Plaintiff was found guilty but made no
 12 mention of his religious convictions at the hearings. Nor did Plaintiff submit any inmate appeals
 13 challenging the discipline at that time. Instead, Plaintiff waited seven years to submit an inmate
 14 appeal. Just before Plaintiff submitted the appeal, new regulations and policies were enacted
 15 entitling inmates to credit restoration if they could prove they received a grooming standard
 16 violation based upon religious convictions.

17 Plaintiff cannot show that prison officials enforced the grooming standard in violation of his
 18 rights under the First and Fourteenth Amendments and RLUIPA. Therefore, Defendants are
 19 entitled to judgment as a matter of law.

20 **ARGUMENT**

21 **I.**

22 **PLAINTIFF DOES NOT PRESENT ADMISSIBLE EVIDENCE SHOWING A**
GENUINE ISSUE FOR TRIAL; THEREFORE DEFENDANTS ARE
ENTITLED TO SUMMARY JUDGMENT.

24 **A. Standard of Review.**

25 Plaintiff, in his opposition to Defendants' motion for summary judgment, must present

27 1. Plaintiff also names Defendants Kane, Wiggins, Childress, Sumlin, and Navarro. To the
 28 best knowledge of the Attorney General's Office, these Defendants have not been served in this suit,
 and no appearance is made on their behalf.

1 admissible evidence showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Brinson v.*
 2 *Linda Rose Joint Venture*, 53 F.3d 1044, 1049 (9th Cir. 1995).

3 Plaintiff cannot create a genuine issue of material fact by simply making assertions in his
 4 opposition. *S.A. Empresa De Viacao Aerea Rio Grandense v. Walter Kidde & Co.*, 690 F. 2d
 5 1235, 1238 (9th Cir. 1982). Summary judgment is appropriate if Plaintiff “fails to make a
 6 showing sufficient to establish the existence of an element essential to that party’s case, and on
 7 which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
 8 322 (1986). Summary judgment cannot be avoided by relying solely on conclusory allegations
 9 unsupported by factual data. *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989). Normally the
 10 court draws all justifiable inferences in the non-movant’s favor at the summary judgment stage,
 11 but in disputed matters of professional judgment the court’s inferences must accord deference to
 12 the views of prison authorities. *See Beards v. Banks*, 126 S. Ct. 2572, 2578 (2006).

13 It is not the task of the district court to scour the record in search of a genuine issue of
 14 triable fact. *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996). The nonmoving party has the
 15 burden of identifying with reasonable particularity the evidence that precludes summary
 16 judgment. *Id.* If the nonmoving party fails to do so, the district court may properly grant
 17 summary judgment in favor of the moving party. *See id.*; *see also Carmen v. San Francisco*
 18 *Unified School Dist.*, 237 F.3d 1026, 1028-29 (9th Cir. 2001) (even if there is evidence in the
 19 court file which creates a genuine issue of material fact, a district court may grant summary
 20 judgment if the opposing papers do not include or conveniently refer to that evidence). Although
 21 the district court has the discretion to consider materials in the court file not referenced in the
 22 opposing papers, it need not do so. *Id.* at 1029. “The district court need not examine the entire
 23 file for evidence establishing a genuine issue of fact.” *Id.* at 1031.

24 Applying these standards, as discussed below, no material issues of fact exist which would
 25 support Plaintiff’s claim that Defendants violated Plaintiff’s constitutional rights.

26 **B. Plaintiff Produces No Evidence Creating a Genuine Issue of Material
 27 Fact for Trial.**

28 Plaintiff presents numerous declarations in support of his opposition to Defendants’

1 summary-judgment motion, yet does not present any admissible evidence supporting his
 2 assertion that Defendants have violated his constitutional rights.

3 **1. Plaintiff Produces No Evidence Supporting His Allegation that Defendants
 4 Interfered with His Rights Under the First Amendment and RLUIPA; He Is
 5 Not Entitled to Restoration of Behavioral Credit.**

6 In his declarations supporting the opposition, Plaintiff attempts to show that Defendants
 7 substantially burdened his religious exercise by enforcing grooming policies even though they
 8 knew he was a practicing Muslim. An inmate's religious exercise is substantially burdened
 9 ““where the state . . . denies [an important benefit] *because of conduct mandated by religious*
 10 *belief*, thereby putting substantial pressure on an adherent to modify his behavior and to violate
 11 his belief.”” *Warsoldier v. Woodford*, 418 F.3d 989, 996 (9th Cir. 2005) (emphasis added).
 12 “Once the plaintiff establishes that the challenged state action substantially burdens his religious
 13 exercise, the government bears the burden of establishing that the regulation serves a compelling
 14 government interest and is the least restrictive means of achieving that interest.” *Shakur v.*
 15 *Schrirro*, 514 F.3d 878, 889 (9th Cir. 2008). In *Shakur* and *Warsoldier*, inmates made prison
 16 officials aware of their religious convictions. *Warsoldier*, 418 F.3d at 992; *Shakur*, 514 F.3d at
 17 882. But here, Plaintiff does not present any documentary evidence showing that Defendants
 18 knew of Plaintiff's religious beliefs, nor does he explain why he waited until after the credit-
 19 restoration policy was enacted to submit an inmate appeal on the issue. Presumably, if he felt
 20 that his religious convictions were challenged by institutional policy and the 1998 disciplinary
 21 violations, he should have submitted an inmate appeal at that time, rather than waiting until after
 22 grooming policies were changed.

23 Plaintiff asserts that he told several officials that his noncompliance with grooming
 24 policies was due to religious convictions, and that documentation maintained by prison officials
 25 is incomplete. (Decl. Roberson A-7(c) at ¶¶ 4-5.) Plaintiff alleges that he told Defendant Gibbs-
 26 Battenfeld that he was in violation of policy due to religious reasons, but he does not state that he
 27 talked to any other Defendant about his religious beliefs. (Decl. Roberson A-7(d) at ¶ 4.)
 28 Defendant Gibbs-Battenfeld states that Plaintiff never told her he was noncompliant based on
 29 religious beliefs. (Decl. Gibbs-Battenfeld ¶ 4.) But, assuming that Plaintiff's version of the facts

1 is true, Defendant Gibbs-Battenfeld was not notified until sometime in August 2005 that Plaintiff
 2 was in violation of grooming policy based on his religious convictions. (Decl. Roberson A-7(d)
 3 at ¶¶ 4-5.) Thus, Plaintiff's declaration only verifies that he asserted a religious basis
 4 approximately five months before disciplinary restrictions were removed in January 2006.
 5 Furthermore, within the five-month period between Plaintiff's alleged oral notice to Defendant,
 6 and the grooming policy change, Plaintiff refused to attend a classification committee convened
 7 for the purpose of reviewing Plaintiff's disciplinary status based on grooming. (Decl. Young Ex.
 8 D at 24.)

9 CDCR policy relating to grooming regulations was outlined by Director Dovey in
 10 conjunction with emergency regulations promulgated on January 17, 2006. Director Dovey
 11 ordered that any inmate deemed a program failure due to grooming violations should be removed
 12 from program failure status effective January 17, 2006. (Decl. Young Supp. Defs.' Mot. Summ.
 13 J., Ex. G.) Director Dovey instructed that any inmate who had been found guilty of a disciplinary
 14 violation based on grooming standards, and who violated the standard "based on previously
 15 stated religious beliefs" would receive full restoration of credits lost for violations occurring on
 16 or after September 22, 2000, the day that RLUIPA was passed. (*Id.*) Credit restoration would be
 17 granted if an inmate had disciplinary violation following the enactment of RLUIPA, and if that
 18 inmate could prove that noncompliance was based upon religious beliefs. (*Id.*) Proof of
 19 noncompliance based on religious beliefs could include: documented statements at a disciplinary
 20 hearing, investigative employee reports, inmate appeals, classification chronologies, other
 21 documents in the inmate's central file, or any other verifiable document. (*Id.*) Inmates who
 22 could not verify their decision to violate the grooming standards based on religious beliefs were
 23 not entitled to have their credit restored. (*Id.*)

24 Plaintiff produces no evidence in his opposition that he ever presented Defendants with
 25 proof that his violations were "based on previously stated religious beliefs." Even Plaintiff's
 26 alleged statement to Defendant Gibbs-Battenfeld in August 2005 relating to his religious beliefs
 27 would not have been sufficient to grant Plaintiff restoration of behavioral credits under CDCR
 28 policy. As such, Plaintiff presents no genuine issue for trial, and Defendants are entitled to

1 judgment.

2 **2. Declarations of Brown, Shotwell, and Alto.**

3 Plaintiff asserts that he can prove his rights under the Fourteenth Amendment were
 4 violated, because other inmates at the Correctional Training Facility received restoration of
 5 behavioral credits, even though their violations of grooming standards occurred before
 6 September 22, 2000. (Pl.'s Opp'n 3.) The Equal Protection Clause of the Fourteenth
 7 Amendment commands that no State shall ““deny to any person within its jurisdiction the equal
 8 protection of the laws,’ which is essentially a direction that all persons similarly situated should
 9 be treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (*quoting*
 10 *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). But, the declarations of inmates Brown, Shotwell, and
 11 Alto do not provide adequate evidence showing that prison officials failed to uniformly apply
 12 prison grooming policies.

13 The declarations submitted by Plaintiff do not create a genuine issue of fact on the issue
 14 of equal treatment. Inmate Brown asserts in his declaration that his behavioral credits were
 15 restored. (Decl. Brown ¶ 11.) But Brown does not divulge whether or how he verified to prison
 16 officials that his violations were based on religious convictions. Nor does Brown affirm the date
 17 of the disciplinary violations, and whether he received any discipline following September 22,
 18 2000. Instead, Brown attaches an inmate appeal to the declaration, which shows that unknown
 19 Correctional Training Facility officials reviewed Brown's file on February 21, 2006, and found
 20 that he was entitled to retroactive behavioral credits beginning September 22, 2000. (*Id.* Ex. A.)
 21 The declaration does not present a triable issue of fact, because it is unclear what evidence the
 22 classification committee relied on in restoring Brown's behavioral credits. (*Id.*) Inmate Alto was
 23 also granted thirty days of retroactive credits, but like Brown's declaration, Alto does not set out
 24 any facts sufficient to enable the Court to find that Plaintiff was treated any differently. (Decl.
 25 Alto ¶¶ 15-16.)

26 Inmate Shotwell's declaration shows that Shotwell and Plaintiff were not similarly
 27 situated, in that Shotwell was able to verify that his violations of grooming standards were based
 28 on religious convictions. (Decl. Shotwell ¶ 15.) The Correctional Training Facility review

1 committee noted that Shotwell verified the existence of religious beliefs in inmate appeal COR-
 2 02-0992. (*Id.* Ex. A.) Shotwell received restoration of credits because he could provide the
 3 classification committee with verification of his religious convictions, whereas Plaintiff cannot
 4 provide any proof whatsoever.

5 Plaintiff has not produced any admissible evidence showing that he was similarly situated
 6 to other inmates, yet denied the same benefits. As shown above, Plaintiff has not produced any
 7 evidence that he submitted proof to Defendants that he was entitled to credit restoration. Thus,
 8 no genuine issue of fact exists, no reasonable jury could find in favor of Plaintiff on the evidence
 9 in the record, and Defendants are entitled to judgment.

10 **II.**

11 **DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.**

12 The defense of qualified immunity applies to “government officials performing
 13 discretionary functions,” who “generally are shielded from liability for civil damages insofar as
 14 their conduct does not violate clearly established statutory or constitutional rights of which a
 15 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (citation
 16 omitted). The rule of qualified immunity “provides ample protection to all but the plainly
 17 incompetent or those who knowingly violate the law.” *Burns v. Reed*, 500 U.S. 478, 494-495
 18 (1991) (citation omitted).

19 In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court set forth a sequence of
 20 questions to be considered in determining whether qualified immunity is applicable. First, a
 21 Court must consider this threshold question: “Taken in the light most favorable to the party
 22 asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional
 23 right?” *Id.* at 201. If no constitutional right was violated under the alleged facts, the inquiry ends
 24 and defendants prevail. *Id.* If, however, “a violation could be made out on a favorable view of
 25 the parties’ submissions,” then the next sequential step is to ask whether the right was clearly
 26 established. *Id.*

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1 **A. Defendants Are Entitled to Qualified Immunity Because Plaintiff Failed to**
 2 **Show Defendants' Actions Violated a Constitutional Right.**

3 The first step under *Saucier* is to determine whether, taken in the light most favorable to
 4 the party asserting the injury, the facts alleged show that the officer's conduct violated a
 5 constitutional right. *Saucier*, 533 U.S. at 201. As discussed in detail in section I above, Plaintiff
 6 fails to show that Defendants' actions violated his constitutional rights.

7 **B. Defendants Are Entitled to Qualified Immunity Because It Would Not Have**
 8 **Been Clear to a Reasonable Official that the Conduct at Issue was Unlawful.**

9 Assuming arguendo that a constitutional violation could be found, then the next step
 10 under *Saucier* is to ask whether the right violated was a clearly established right. More
 11 specifically, the "relevant, dispositive inquiry in determining whether a right is clearly
 12 established is whether it would be clear to a reasonable officer that his conduct was unlawful in
 13 the situation he confronted." *Id.* at 202.

14 The Supreme Court has held that to deny summary judgment any time a material issue of
 15 fact remains on a claim could undermine the goal of qualified immunity to "avoid excessive
 16 disruption of government and permit the resolution of many insubstantial claims on summary
 17 judgment." *Saucier*, 533 U.S. at 202 (citing *Harlow*, 457 U.S. at 818). In determining whether
 18 Defendants violated clearly established law, the "salient question" is whether the state of the law
 19 at the time provided "fair warning" that their conduct was unconstitutional. *Hope v. Pelzer*, 536
 20 U.S. 730, 740 (2002). The question must focus on "what the officer reasonably understood his
 21 powers and responsibilities to be, when he acted, under clearly established standards." *Saucier*,
 22 533 U.S. at 208.

23 Assuming that Plaintiff violated grooming standards based on religious convictions, it
 24 was not clearly established that restrictions on an inmate's religious exercise must satisfy the
 25 "compelling governmental interest" and "least restrictive means" tests until the Supreme Court
 26 upheld RLUIPA in *Cutter v. Wilkinson*, 544 U.S. 709 (2005). Additionally, Defendants would
 27 not have been aware of the impact on the CDCR until January 17, 2006, when the CDCR
 28 adopted emergency regulations related to grooming standards. Cal. Code Regs. tit. 15, § 3062. It

1 is undisputed that Plaintiff's privilege status was adjusted effective January 17, 2006.

2 As soon as the CDCR promulgated regulations in accordance with RLUIPA, prison
3 officials at the Correctional Training Facility began to review cases of inmates who had been
4 charged with a disciplinary violation based on grooming. (Decl. Gibbs-Battenfeld ¶ 7.) Plaintiff
5 could not verify through any document in his central file, any inmate appeal, or any other
6 evidence whatsoever that he had violated grooming policies based on religious convictions. In
7 fact, the evidence before the classification committee included Plaintiff's statements at the
8 grooming policy violation hearings, where Plaintiff merely said "it doesn't matter," and "I don't
9 care to address that." (Compl. Exs. A, B, C.) It would not have been clear to a reasonable
10 official that failure to restore behavioral credits based on the lack of evidence violated a clearly
11 established right, if in fact it did.

12 **CONCLUSION**

13 Defendants are entitled to judgment because Plaintiff has not produced evidence
14 supporting every essential element of his claims under the First and Fourteenth Amendments,
15 and under RLUIPA. As outlined in Defendants' summary-judgment motion, Defendants cannot
16 be held liable for any constitutional violation. Additionally, Defendants are entitled to qualified
17 immunity, because even if a constitutional violation could be proven, reasonable officials in

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1 Defendants' positions could have believed that their conduct in this case comported with the law.

2

3 Dated: June 2, 2008

4

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Roberson v. Woodford, et al**

No.: **C 07-3497 CRB (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 2, 2008, I served the attached

**DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Lennis L. Roberson, D-34017
Correctional Training Facility
P.O. Box 686
Soledad, CA 93960-0686
In Pro Per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 2, 2008, at San Francisco, California.

L. Santos

Declarant



Signature